

DEPARTMENT 61 LAW AND MOTION RULINGS

Case Number: 23STCV14890 **Hearing Date:** April 8, 2024 **Dept:** 61

Defendant Vanessa Valdes' Special Motion to Strike (Anti-SLAPP) is GRANTED as to each cause of action.

Defendant to provide notice.

SPECIAL MOTION TO STRIKE

In 1992 the Legislature enacted Code of Civil Procedure section 425.16 as a remedy for the “disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances.” (Code Civ. Proc., §425.16, subd. (a); *Wilcox v. Superior Court* (1994) 27 Cal.App.4th 809, 817.) The lawsuits are commonly referred to as “SLAPP” lawsuits, an acronym for “strategic lawsuit against public participation.” (*Equilon Enterprises, LLC v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 57, fn. 1.) A defendant opposing a SLAPP claim may bring an “anti-SLAPP” special motion to strike any cause of action “arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue” (Code Civ. Proc., § 425.16, subd. (b)(1).) An anti-SLAPP motion may be addressed to individual causes of action and need not be directed to the complaint as a whole. (*Shekhter v. Financial Indemnity Co.* (2001) 89 Cal.app.4th 141, 150.)

In ruling on an anti-SLAPP motion, a trial court uses a “summary-judgment-like procedure at any early stage of the litigation.” (*Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 192.) This is a two-step process. First, the defendants must show that the acts of which the plaintiff complains were taken “in furtherance of the [defendant]’s right of petition or free speech under the United States of California Constitution in connection with a public issue.” (Code Civ. Proc., §425.16 subd. (b)(1).) Next, if the defendant carries that burden, the burden shift to the plaintiff to demonstrate a probability of prevailing on the claim. (Code Civ. Proc., § 425.16 subd. (b)(3).)

In making both determinations the trial court considers “the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.” (Code Civ. Proc., § 425.16, subd. (b)(2); *Equilon Enterprises, supra*, 29 Cal.4th at p. 67.)

PROTECTED ACTIVITY

The anti-SLAPP statute defines protected activities as:

(1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.

(Code Civ. Proc., § 425.16, subd. (e), emphasis added.)

Defendant Vanessa Valdes (Valdes) argues that the claims of Plaintiff Stewart Lucas Murrey (Plaintiff) alleged against her arise from protected activity, namely “written or oral statement[s] or writing[s] made in a place open to the public or a public forum in connection with an issue of public interest,” as well as “any other conduct in furtherance of the exercise of the constitutional right of free speech in connection with a public issue or an issue of public interest.” (Motion at p. 5.) Defendant bases this contention on the nature of the conduct alleged against her, which consists of posts made in a Facebook group called “Are We Dating the Same Guy – Los Angeles,” evidently a Facebook group in which users post or inquire with other users about men they have dated or are looking into dating. (Motion at p. 2; FAC ¶ 4.)

Plaintiff alleges the following misconduct collectively against Valdes and other defendants:

Defendants wrote, published, and circulated defamatory statements about plaintiff to millions of users on Facebook . . . that include the following states: “Public records show” [that plaintiff has] involvement in [a] MURDER case of his ex wife,” is “suspected of murder”; [h]as several domestic violence charges filed against him”; has “filed court cases against women trying to extort money from them”; “[h]as acted aggressively in court”; “has STDs”; has an “ex-wife who was killed”; deserves to be “ARRESTED”; “claim[s] he is an attorney”; and that plaintiff is listed on the California court’s public record as being a vexatious litigant.”

(FAC ¶ 8.)

It is unclear from the pleading which of the above statements Plaintiff attributes to Valdes, but Plaintiff in opposition presents a post by Valdes, in a comment chain with other Facebook users about Plaintiff:

Kari Woodring Webster

Wow. Talk about going down a rabbit hole. His Twitter makes him look insane and all the court cases. Wow

Liv Burger

Be aware he’s still active on tinder. Just reported him

Vanessa Valdes

“HOW HAS THIS GUY NOT BEEN REMOVED FROM DATING APPS AND ARRESTED ALREADY?!?! ”

I matched with him a couple years ago and received the most BIZARRE and threatening messages from him! It was so weird and scary that I even reported him to Hinge support, but never knew if anything was done about him. I’m so disgusted to see all these horrible testimonials about him, because it means he gets away with everything. He needs to be stopped!”

(Murrey Decl. Exh. 4.)

Plaintiff presents another Facebook post in which Valdes, apparently reacting to another user’s account of dealings with Plaintiff, posts the following:

So unbelievable. Thank you for sharing. I just joined this group and it’s already been so helpful. I’m so glad we’re protecting each other.

(Murrey Decl. Exh. 7.) Valdes followed this comment with an image of a report she made to a dating app concerning Plaintiffs, in which she said:

Lucas sent me some very strange, very aggressive messages out of nowhere. He called me names and said he liked “watching me burn”. I feel threatened and afraid for any woman who agrees to meet with him in person.

(Murrey Decl. Exh. 7.) [1]

Although Plaintiff argues that Valdes made statements implying that he had murdered his ex-wife or girlfriend, Plaintiff offers no evidentiary foundation to attribute any such statement to Valdes. (Murrey Decl. ¶¶ 15–16, Exh. 6.) Plaintiff also attributes to Valdes a user’s statement that Plaintiff “is truly dangerous,” but this post appears to be directed to Valdes, not her own communication. (Murrey Decl. ¶¶ 20–21, Exh. 8.)

From the above, there is ample basis to conclude that Plaintiff’s suit against Valdes arises from protected activity, both through statements made in a public forum concerning an issue of public interest and through conduct in furtherance of the exercise of the constitutional right of free speech in connection with a public issue or an issue of public interest. Valdes’s statements were made in an online Facebook group to what Plaintiff’s FAC characterizes as an audience of “millions.” (FAC ¶ 10.) Similar online postings have been held to involve a “classic public forum.” (*Chaker v. Mateo* (2012) 209 Cal.App.4th 1138, 1146.)

Plaintiff’s objection that he was not permitted to join the group in question does not obviate the character of public forum. (Opposition at pp. 10–11.) Smaller scale, closed publications have been held to amount to public fora. Statements made in a newsletter of limited circulation to a small neighborhood of homeowners and

characterized as “a mouthpiece for a small group of homeowners who generally would not permit contrary viewpoints to be published in the newsletter” has likewise been held to be a public forum. (*Damon v. Ocean Hills Journalism Club* (2000) 85 Cal.App.4th 468, 476.) A federal court applying this precedent ruled that even a private Facebook group of 14,900 members could constitute a public forum under the anti-SLAPP statute. (*Hicks v. Bradford* (C.D. Cal., Dec. 13, 2022, No. CV217330DMGGJSX) 2022 WL 20689541, at *4.) Thus the statements at issue here were made in a public forum.

The evidence and pleadings also establish that Valdes’s posts involved a matter of public interest: women’s security against male violence and harassment. Plaintiff’s allegations disclose as much. He states that these and other Facebook groups “allegedly exist to protect women.” (FAC ¶ 59.) In his original Complaint, he found fault with Defendants “postur[ing] about protecting women” in their posts. (Complaint ¶ 30.) He contended that the posters “aggressively promote themselves . . . as champions and protectors of women.” (Complaint ¶ 31.) The evidence indeed shows that Valdes herself construed her statements within this pattern, at one point stating, “I’m so glad we’re protecting each other.” (Murrey Decl. Exh. 7.) Although Plaintiff contends that these representations are insincere, this alleged insincerity would not remove the subject of discussion from the public interest. Courts have held comments made on a “Ripoff Report Web site” about a business owner’s “character and business practices,” concerned a public interest under the anti-SLAPP statute. (*Chaker, supra*, 209 Cal.App.4th at p. 1146.) Valdes’ comments about Plaintiff’s harassing conduct, on a forum directed to warning women against men who engage in such conduct, concerned at least as great a public interest.

Thus the present case against Valdes arises from protected activity within the meaning of the anti-SLAPP statute.

LIKELIHOOD OF PREVAILING

After a defendant meets their burden of showing that the gravamen of the complaint involves protected activity, the plaintiff must then “demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited.” (*Matson v. Dvorak* (1995) 40 Cal.App.4th 539, 548.) A defendant can meet its burden if it can establish that the plaintiff cannot overcome an affirmative defense. (*Birkner v. Lam* (2007) 156 Cal.App.4th 275 at 285.)

“[A] plaintiff cannot simply rely on his or her pleadings, even if verified. Rather, the plaintiff must adduce competent, admissible evidence.” (*Grenier v. Taylor* (2015) 234 Cal.App.4th 471, 480.)

“Legally sufficient” means that the cause of action would satisfy a demurrer. (*Dowling v. Zimmerman* (2001) 85 Cal.App.4th 1400, 1421.) The evidentiary showing must be made by competent and admissible evidence. (*Morrow v. Los Angeles Unified School District* (2007) 149 Cal.App.4th 1424, 1444.) Proof, however, cannot be made by declaration based on information and belief. (*Evans v. Unkow* (1995) 38 Cal.App.4th 1490, 1497–1498.) The question is whether the plaintiff has presented evidence in opposition to the defendant’s motion that, if believed by the trier of fact, is sufficient to support a judgment in the plaintiff’s favor. (*Zamos v. Stroud* (2004) 32 Cal.4th 958, 965.)

Defamation “involves (a) a publication that is (b) false, (c) defamatory, and (d) unprivileged, and that (e) has a natural tendency to injure or that causes special damage.” (*Price v. Operating Engineers Local Union No. 3* (2011) 195 Cal.App.4th 962, 970.) A false light claim based upon the same facts as a defamation claim “must meet the same requirements.” (*Hawran v. Hixson* (2012) 209 Cal.App.4th 256, 277.) “The sine qua non of recovery for defamation . . . is the existence of falsehood.” [Citation.] Because the statement must contain a provable falsehood, courts distinguish between statements of fact and statements of opinion for purposes of

defamation liability. Although statements of fact may be actionable as libel, statements of opinion are constitutionally protected.” (*ZL Technologies, Inc. v. Does 1-7* (2017) 13 Cal.App.5th 603, 624.)

Plaintiff’s defamation and false light claims against Valdes fail because Defendant identifies no defamatory or false publications made by Valdes. Although Plaintiff identifies an undated and otherwise unelaborated post implicating him in the murder of his ex-wife, Plaintiff identifies no evidence linking Valdes to the post, or any of her other statements to false accusations of murder.

The statements that Plaintiff does identify are not false statements of fact. Valdes in one post asked, in all capital letters, how it could be that Plaintiff has “NOT BEEN REMOVED FROM DATING APPS AND ARRESTED ALREADY?!?!” (Murrey Decl. Exh. 4.) This statement immediately preceded Valdes’s description of her own experience matching with Plaintiff on a dating app, in which he had made “bizarre and threatening messages” that were “so weird and scary that I even reported him to Hinge support.” (*Ibid.*) Valdes said that Plaintiff “needs to be stopped!” (*Ibid.*) But Valdes did not misrepresent the character of her interaction with Plaintiff. She truthfully reported to Hinge (and posted the report on Facebook) that Plaintiff had told her “it’s fun watching you burn.” (Murrey Decl. Exh. 2.) Although Plaintiff now presents the comment as stating that Valdes was burning “her second chance to connect with me,” there is no hint of this bizarre hidden meaning in the actual text communications. (Opposition at pp. 8–9; Murrey Decl. ¶ 6, Exh. 2.)

Indeed, Valdes accurately reported the comment, and had ample reason to find Plaintiff’s messages threatening. Based on the texts he himself presents here, Murrey opened communication with Valdes solely to harangue her for using a picture with another man in her profile. (Murrey Decl. Exh. 1.) When told to read the caption, he responded by calling her a “moron,” and saying it was fun to watch her “burn.” (Murrey Decl. Exh. 2.) When Valdes said she was going to report him, he threatened to subpoena any report she made to Hinge about his behavior and sue her for defamation. (Murrey Decl. Exhs. 1–3.) Plaintiff had ample reason to opine on the “threatening” and “scary” nature of Plaintiff’s communications, and to question in hyperbolic tones why he had not been arrested and removed from dating apps.[2]

Plaintiff in opposition attempts to add further defamatory statements to his case that are not mentioned in his pleading. Specifically, Plaintiff identifies statements made on a GoFundMe web page, seeking to raise money for the legal expenses of the defendants in this action, which includes the statement that Defendant “has named 50+ defendants in total,” and that the defendants are being sued for sharing “truthful accounts of our personal experiences.” (Opposition at p. 3; Murrey Decl. Exh. 5.)

But both statements are substantially true. As noted above, Plaintiff is suing Valdes for accurately relaying and opining on the nature of her interaction with Plaintiff. And even if a defamatory meaning could be inferred from the numerical difference between the “50+ defendants” described on the GoFundMe page and the ten named Defendants and 50 unnamed Doe defendants actually listed in the caption to Plaintiff’s FAC, the GoFundMe page’s characterization is not far off the mark on substance. Beyond the ten named defendants, Plaintiff’s FAC lists dozens (if not hundreds) of “Facebook cyberbully criminals” by name. (FAC at p. 7, fn. 1.) And as this court noted in denying Plaintiff’s first motion in this case, Plaintiff has not attempted to limit his discovery to the named defendants:

[I]t is unclear which persons Plaintiff seeks to identify. The Complaint lists ten individual defendants in the caption, as well as 50 potential Doe defendants. His Complaint also contends that Facebook itself, and potentially its “administrators/moderators,” are defendants as well. (Complaint ¶ 33.) Plaintiff further confuses matters in his declaration by identifying scores of other women whom he claims participated in the wrongful conduct at issue. (Murrey Decl. ¶¶ 49–51, 52, 55, 57), as well as a large number of Facebook moderators whom he claims “operate behind the scenes and with no responsibility to the law.” (Murrey Decl. ¶ 59.) Plaintiff does not indicate the individuals for whom discovery is sought, and the potential scope is incredibly broad.

(9/29/2023 Order.) Given that Plaintiff himself has had trouble keeping track of who is in this case and out of it, the statements on the GoFundMe page are thus neither false nor defamatory.

The motion to strike is therefore GRANTED as to the first and second causes of action.

As to the remaining causes of action — for sex discrimination, gender violence, false light, invasion of privacy, intentional infliction of emotional distress, intentional interference with economic advantage, negligent interference with economic advantage, civil conspiracy, and declaratory relief, Plaintiff advances no argument save to claim that Valdes' statements do not constitute protected activity. (Opposition at pp. 11–14.) Plaintiff thus makes no attempt to satisfy his burden to show a likelihood of prevailing on the claims.

The evidence presented shows no possibility of Plaintiff prevailing against Valdes on any claim. The third cause of action for sex-based discrimination under Civil Code § 51, concerns Defendants' alleged failure to permit Plaintiff to join their Facebook group to challenge their alleged defamatory statements. (FAC ¶¶ 57–68.) But even if a Facebook group is construed as a "business establishment" under Civil Code § 51, subd. (b), there is no evidence that Valdes either defamed Plaintiff because of his sex or had any role in denying him access to the group. Nor has Valdes engaged in "gender violence" against Plaintiff within the meaning of Civil Code § 52.4, as might support Plaintiff's fourth cause of action. Although Plaintiff alleges that Defendants disclosed his full name, telephone number, address, likeness, text messages, medical decisions, and vaccine history to others (FAC ¶ 93), there is no evidence that Valdes disclosed any private information. For the same reasons, there is no evidence to support an allegation that Valdes engaged in outrageous conduct under the seventh cause of action for intentional infliction of emotional distress. (FAC ¶¶ 104–111.) And the claims for interference with economic advantage require as an element that the defendant commit "wrongful acts," which the evidence does not suggest occurred here. (*Roy Allan Slurry Seal, Inc. v. American Asphalt South, Inc.* (2017) 2 Cal.5th 505, 512.) Plaintiff presents no evidence that Valdes conspired with other defendants to commit wrongful acts, or to support his derivative cause of action for declaratory relief.

The anti-SLAPP motion is thus GRANTED in its entirety.

[1] Plaintiff provides text messages exchanged between himself and Valdes on the Hinge dating app, which formed the basis for Valdes's later comments about him on Facebook. (Murrey Decl. Exhs. 1–3.) Valdes attaches additional messages to her motion, the authenticity of which Plaintiff does not challenge. These messages are as follows:

PLAINTIFF (P) [commenting on a photo in which Valdes is standing with a man]: Let's hang [phone number]

VALDES (V): Bold move :)

P: I'm amused by how you'll mess it up

P: Wait you already did

P: Why is there a guy in your pic genius?

V: I'm amused by how you think you know me well enough to talk to me like one of your buddies.

V: Read my caption, genius.

P: Nobody reads captions moron

P: But it's fun watching you burn lol

P: Listen I wish you well in your search good luck

P: Can you ever forgive me for not reading your online dating explanations of guys in your pic dear?

P: I know my credentials are hardly worthy of you much less my looks but can you please have your pet get it's hair all over my nice clothes?

V: Listen, Lucas Murrey. You're fucking with the wrong woman. I'm reporting your ass. Stay away from women and get help.

P: Good Vanessa Loser I'm subpoenaing your idiot "report" and possibly suing you for defamation

P: Does it upset you that I've broken no laws just like it's legal for you to a moron? [sic]

P: By the way, real decent women love me lol

P: Sorry it's not your night

P: And yes I will read anything you or anyone else dumb enough to frivolously "report" me say(s)

P: Try it

P: Like I said, amusing

P: "Stay away from women"? I'm sorry your so jealous when rejected

P: And the screenshots/data of you are enough to identify you via said subpoena

[2] Although Valdes did not make the comment in which Plaintiff is called "truly dangerous," her narrative of her own experience would provide ample context to show this statement as being non-actionable opinion. (Murrey Exh. 8.)

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